

BEFORE THE
Federal Communications Commission
 WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
 Implementation of Section 309(j))
 of the Communications Act)
 Competitive Bidding)

PP Docket No. 93-253

To: The Commission

COMMENTS OF APCO

The Association of Public-Safety Communications Officials-International, Inc. ("APCO")^{1/} hereby submits the following comments in response to the Commission's Notice of Proposed Rulemaking, FCC 93-455 (released October 12, 1993), in the above-captioned proceeding to establish rules for competitive bidding for radio frequency assignments.

APCO is the nation's oldest and largest public safety communications organization representing the interests of all elements of the public safety land mobile radio community. APCO has over 10,000 members involved in the management and operation of radio communications systems for police, fire, local government, emergency medical, forestry conservation, highway maintenance, and other public safety services. APCO serves as the FCC's certified frequency coordinator for all Part 90 Police, Local Government and 420 MHz and 800 MHz Public Safety channels.

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^{1/} Formerly Associated Public-Safety Communications Officers, Inc.

The Commission's Notice proposes rules to implement new Section 309(j) of the Communications Act of 1934, which authorizes the Commission to use competitive bidding when selecting among mutually exclusive applications for initial licenses. However, Section 309(j)(2)(A) of the Act provides that competitive bidding may only be used if "the principal use of that spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers." The Commission's Notice seeks comments as to which of its current radio services would be subject to competitive bidding under this criteria.

Frequency bands allocated specifically for public safety pursuant to Part 90 are clearly exempt from competitive bidding under the criteria established in Section 309(j)(2)(A). However, the Commission must also exclude from competitive bidding other radio frequency bands or services that are or are likely to be critical for licensed public safety communications systems. State and local government public safety agencies will never be in a position to outbid commercial entities for spectrum, and should never be forced to "buy" spectrum necessary to provide basic government services to the public.

The Commission's Notice identifies two current service categories that are of particular concern to APCO, the 800 MHz General Category channels under Part 90, Subpart S, and Private Operational Fixed Service ("POFS") microwave

facilities under Part 94,^{2/} both of which have significant public safety applications. Many public safety agencies around the country operate 800 MHz facilities with channels licensed in the General Category, if only because dedicated 800 MHz Public Safety Pool and National Public Safety Plan channels are unavailable. Of even greater importance are Part 94 POFS microwave facilities, which are widely used as the "backbone" for police, fire, emergency medical and other public safety mobile radio communications systems.

Fortunately, the Commission proposes to exclude these two radio service categories from competitive bidding. While there are some subscriber (e.g., SMRs) or private carrier services in 800 MHz General Category and POFS frequency bands, the "principal use of that spectrum" does not involve "the licensee receiving compensation from subscribers." APCO agrees with this aspect of the Commission's proposal.

The Commission also seeks comment on an alternative approach of using competitive bidding in any radio service in which there is "any use, no matter how minimal," of that spectrum for subscriber services. Notice at ¶33. APCO strongly opposes such an approach, as it would force "[p]olice departments and local governments" and other entities to have to bid against commercial entities such as SMRs for spectrum on "contaminated" bands. Id.

^{2/} Notice at ¶¶ 139, 146 (see also notes 15 and 16).

The Commission asks "whether this apparent difficulty might be resolved by exempting only public safety entities from competitive bidding." Id. Such a "public safety" exemption, however, would have to apply to all governmental bodies, none of which should be forced to buy spectrum to provide basic public services. There would also have to be provisions to ensure that governmental entities would still have access to the frequency bands in question, either by setting aside frequencies or by giving governmental entities priority over all others. A better approach, and an approach more consistent with the plain language of the Act, is simply to exempt such "contaminated" frequency bands from competitive bidding.

APCO believes that the best approach would be for the Commission to adopt a general policy that competitive bidding will not be used in any radio service that has, or is likely to have, "significant" use by state and local government licensees, regardless whether the radio service otherwise qualifies for competitive bidding under Section 309(j)(2)(A). This would ensure that state and local governments would never be forced to bid for spectrum. The Commission must not forget that its new authority to use competitive bidding is permissive, not mandatory, and does not override its higher public interest obligations under Section 1 of the Act to make communications service available "for the purpose of promoting safety of life and property." 47 U.S.C. §151.

CONCLUSION

For the reasons discussed above, APCO urges the Commission to exempt from competitive bidding any radio service category in which there is or is likely to be significant use by state and local government licensees.

Respectfully submitted,

ASSOCIATION OF PUBLIC-SAFETY
COMMUNICATIONS OFFICIALS-
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